

Appl. No.: 10/077,081  
Art Unit: 3711 Docket No.: B01-74  
Reply to Office Action of January 3, 2005

### REMARKS

Claims 1-3, 7-17, 35-46, 48-50, 52-73 appear in this application for the Examiner's review and consideration. Independent claim 1 has been amended to recite that the moisture vapor barrier layer consists essentially of a non-ionomeric acid terpolymer or copolymer, or combinations thereof and having a Shore D hardness of about 23 to about 40. Independent claim 35 has been amended to recite that the moisture vapor barrier layer comprises a non-ionomeric material having a melt flow index greater than about 300 grams/10 minutes and a thickness of about .005 inches. Support for the amended elements is found at least in the Specification, on page 7, lines 17-23; page 8, lines 1-14, 18 and 28-31; page 9, lines 7 and 20-21; and page 10, lines 12-14. Claim 67 has been amended to correct the dependency of the claim. Claims 2-3 and 68-73 are withdrawn.

### Claim Objection

Claim 67 was objected to as depending from a withdrawn claim. Claim 67 has been amended to depend from claim 66. Applicants respectfully request reconsideration and withdrawal of the claim objection.

### Rejection Over U.S. Patent No. 6,325,731 In View of U.S. Patent No. 6,306,968

Claims 1-2 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,325,731 to Kennedy III, *et al.* ("Kennedy") in view of U.S. Patent No. 6,306,968 to Bellinger *et al.* ("Bellinger"). Kennedy is generally directed to a multi-layer golf ball. Bellinger is generally directed to a multi-layer golf ball and method of making same.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

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It is well held that a *prima facie* case of obviousness can be rebutted if Applicant can show that the cited reference, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 43 U.S.P.Q.2d 1362, 1365 (Fed. Cir. 1997). The reference may further be said to teach away when a person of ordinary skill in the art, upon reading the reference, would be led in a direction divergent from the path that was taken by Applicant. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360, 52 U.S.P.Q.2d 1294, 1298 (Fed. Cir. 1999).

As now recited in amended independent claim 1, the moisture vapor barrier layer consists essentially of a non-ionomeric acid terpolymer or copolymer, or combinations thereof and has a Shore D hardness of about 23 to about 40. Kennedy fails to teach or suggest a moisture vapor barrier layer consisting essentially of a non-ionomeric acid terpolymer or copolymer or combinations thereof and having a Shore D hardness within the claimed range. Kennedy discloses a non-ionomeric thermoplastic material for one embodiment of the inner cover layer having a Shore D hardness of greater than or equal to 60. (Kennedy, col. 14, lines 4-10). Kennedy teaches that the inner cover layer preferably has a Shore D hardness of 65 or more. (Kennedy, col. 7, lines 13-16). Bellinger fails to cure the deficiencies of Kennedy. Bellinger teaches an inner cover layer having a Shore D hardness between 50 and 65. (Bellinger, col. 4 lines 15-16). There is no suggestion or motivation in Kennedy and Bellinger to have an inner cover layer with a Shore D hardness of 23 to 40. Thus, Kennedy and Bellinger fail to teach the claimed recitation and teach away from having a Shore D hardness for the inner cover layer of less than 50.

Additionally, Bellinger teaches away from having an inner cover layer consisting essentially of a non-ionomeric acid terpolymer or copolymer, as Bellinger teaches to form polyamide containing compositions that include at least one non-ionomeric terpolymer. For example, the composition may include a reaction product of polyamide, ionomeric copolymer and ester and at least one non-ionomeric terpolymer. (Bellinger, col. 3, lines 35-65). Thus, one of skill in the art would not have been motivated to use the materials of Bellinger in an inner layer that consists essentially of a non-ionomeric terpolymer or copolymer. Kennedy and Bellinger simply fail to teach or suggest the invention of claim 1.

With regard to amended independent claim 35, Kennedy fails to teach or suggest the claimed non-ionomeric material having a melt flow index of greater than about 300 grams/10 minutes. Bellinger fails to cure this deficiency, as Bellinger teaches a melt flow rate of .5 to 20

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grams per 10 minutes and does not teach a higher melt flow for non-ionomeric materials. (Bellinger, col. 7, lines 1-15).

Kennedy also fails to teach an inner cover layer having a thickness of about .005 inches as claimed in amended independent claim 35. Instead, Kennedy teaches an inner cover layer thickness of .01 to .1 inch. (Kennedy, col. 7, lines 5-8). Bellinger fails to cure this deficiency. Thus, amended independent claim 35 is patentable over Kennedy and Bellinger.

The rejections under 35 U.S.C. § 103(a) are believed to have been overcome for at least the above reasons. Applicant respectfully requests reconsideration and withdrawal thereof.

Conclusion

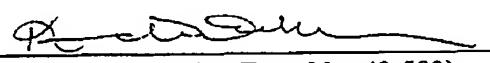
Based on the remarks set forth above, Applicant believes that all of the rejections have been overcome and the claims of the subject application are in condition for allowance. Should the Examiner have any further concerns or believe that a discussion with the Applicant's attorney would further the prosecution of this application, the Examiner is encouraged to call the attorney at the number below.

No fee is believed to be due for this submission. However, should any required fees be due, please charge them to Acushnet Company Deposit Account No. 502309.

Respectfully submitted,

23 March 05

Date

  
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